IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Bail Appl..No. 6947 of 2007()

CR.NO.173/07 OF THE KARUNAGAPPALLY EXCISE RANGE

PETITIONER : ACCUSED NO.1:

KOCHUKUMARAN, AGED 49 YEARS,
S/O.NANU, VISHNUBHAVANAM, THAHAVATHKKUMMURI
KIZHAKKU, THAZHAVA VILLAGE, KARUNAGAPPALLY,
KOLLAM DISTRICT.

BY ADV. SRI.C.K.PRASAD
SRI.ABHILASH S.FRANCIS

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
EXCISE INSPECTOR, KARUNAGAPPALLY EXCISE RANGE,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6947 of 2007

Dated this the 27th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. 2 litres of arrack was allegedly recovered from a house in the possession of the petitioner. The petitioner had allegedly gone away from the house a little prior to the detection of the crime. The details are mentioned in the seizure mahazar and in the occurrence report. The petitioner has not been arrested so far. He apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor points out that the available indications certainly suggest the complicity of the petitioner. The building belonged originally to the brother in law of the petitioner and at the relevant time, it was in the possession of the petitioner. The petitioner has a history of criminal antecedents. He has been accused in 2 earlier crimes also under the Abkari Act.

4. Having considered all the relevant inputs, I am unable to find any features in this case which would warrant or justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The mere fact that the petitioner was not physically present for apprehension by the excise officials at the time of detection is, according to me, too insufficient a reason to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I agree with the learned Public Prosecutor that this is fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. He must then seek regular bail in the usual course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-